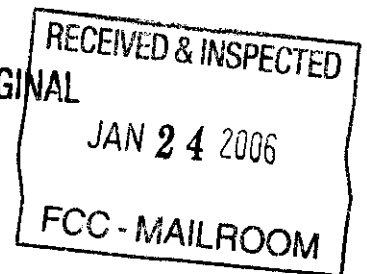


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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the Matter of
Implementation of Section 621(a)(1) of
the Cable Communications Policy Act of 1984
as amended by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

COMMENTS OF CITY OF TORRANCE

These Comments are filed by City of Torrance in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Torrance believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Torrance has a population of 147,405 (as of June 30, 2005) and is the fifth largest city in Los Angeles County. Our franchised cable provider is Time Warner Cable. Our community has negotiated cable franchises since 1982.

Our Current Franchise

Our current franchise began in 1982 and is on a month-to-month basis due to a variety of reasons, including two settlement agreements and two transfers. Neither the cable operator nor the City has initiated renewal proceedings because our situation is unique. We have a good business relationship with the cable operator; they have upgraded our system, and aggressively offer new services to our community. We have managed our finances such that we are not in immediate need of capital funds for equipment replacements, we have public access support, and enough local channels to satisfy the needs of our community. In addition, the cable operator is responsive to their subscribers and the city. As a result, at this time, we *are not* currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee

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purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 3 channels devoted to educational access; and 2 channels devoted to government access. We also require coverage of CSPAN I AND CSPAN II, and one leased access channel.

Our franchise requires that our public access channel be supported in the following ways by the cable operator: \$173,000 annually. The government channel and additional funding is supported through the franchise fee. The educational access channel is supported by each of the educational institutions: Torrance Unified School District, El Camino Community College, and California State University at Dominguez Hills.

Our franchise contains the following institutional network ("I-Net") requirements: Connection to at least 25 municipal buildings for the purposes of two-way interaction. We are able to cablecast City Council meetings live from various remote locations, bringing the Council meetings to the residents. The city uses the I-Net to distribute 4 channels (1 public, 1 educational, 2 government) into the cable system. The school district and university distribute their channel through the I-Net and I-Net/microwave. All of the fire stations are connected through the I-Net for video presentations.

Our franchise contains the following requirements regarding emergency alerts: The City has the ability through the Emergency Override System to initiate a message through all cable channels in the event of an emergency that we determine. The City is able to access the EOS via telephone with an audible message accompanied with a visual text message. The text message directs viewers to the government access channel for specific information. We coordinated this policy with the cable operator and neighboring cities served by the cable operator.

These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: During the Los Angeles Civil Unrest, Flooding, and September 11, 2001.

Our franchise contains the following customer service obligations by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. We require a local office and phone number for Torrance subscribers to utilize. This maintains a good relationship with the subscribers and allows the cable operator to maintain direct contact with their customers. Generally, central offices create disconnection between the community and the service. The cable operator must also have local repair and maintenance support. All complaints must be resolved within 3 calendar days; they must have sufficient staff and state of the art telephone answering system to respond to customers within a reasonable

time. The telephone service must be available 24 hours a day, seven days a week. Inquiries and complaint calls shall be accepted in person and/or over the telephone 24 hours a day, seven days a week.

Our franchise contains the following reasonable build schedule for the cable operator:

Wiring Entire City

1. Shall diligently and continuously pursue the construction of the cable television system so that cable television service shall be available, where permission to enter has not been refused, to every single family residence, two-family residence, multiple-family residence, and to every mobile home park and apartment complex in the City and shall be available to City government, to the Torrance Unified School District and to health care facilities.
2. Shall provide cable television service to other institutions, to stores and other commercial establishments and to industrial facilities when, in the reasonable judgment of the City and Grantee, it is economically feasible to do so.
3. The City Manager may grant an exemption from the provisions of subsection 1 of this Section B where the Grantee shows to the City Manager's reasonable satisfaction that it is impracticable to provide cable television services to a particular residence, mobile home park or apartment complex. In making such determination, the City Manager shall consider, among other factors, the presence of structural or natural obstacles, topography, distance of subject property from nearest cable connection, presence of utility poles, and cost of constructions.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

State-of-the-Art System Required.

The Grantee shall at all times maintain a cable television system which is equivalent to the most up-to-date and technologically advanced systems accepted in the industry, commonly referred to as "state-of-the-art", but only where technically and economically feasible. Failure to so maintain the CATV system shall be considered to be a default under this franchise. In the event that the City finds that the Grantee is not maintaining such a system, the city shall notify the Grantee in writing of such finding, and the Grantee shall have sixty (60) days in which to make the necessary correction or addition to comply. In the event the Grantee disputes the finding of the City, the issue shall be resolved by arbitration in accordance with the rules of the American Arbitration Association.

Our franchise contains the following insurance and bonding requirements:

- Rearrangement of facilities, requires the Grantee to deposit either cash or a corporate Surety Bond in an amount,
- Any mechanics or other liens, the Grantee shall promptly furnish a bond to the City,
- Construction bond: a Performance Bond and a labor and Material Bond (or certificate of deposit) in the amount and provide a penalty of two hundred and fifty thousand dollars (\$250,000),
- Construction Security Deposit, the Grantee shall deposit Twenty-five thousand Dollars (\$25,000) in cash (or Certificate of Deposit) to guarantee liquidated damages (if any) for delay in completion of the construction and installation

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate

municipal office as well before it may access the public rights of way. These fees vary depending on the project. Details to all fees can be reviewed on www.TorrNet.com.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: All businesses conducting business in the public right of way must obtain an encroachment permit. Through the permit process, the city is able to properly manage the PROW.

The Franchising Process

The cable system serving our community also serves many adjoining communities: El Segundo, Gardena, Hawthorne, and Lawndale. In 1995 our communities, along with the cable operator, worked together to conduct a needs assessment in anticipation of a franchise renewal. This would have allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

To the extent that applicable State law or the Rules of the Federal Communications Commission provide the Grantee with any exemption from any of the rights reserved by the City, such exemption shall be recognized and the actions of the City shall be limited thereby.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance:

SECTION 724. ADOPTION OF ORDINANCES AND RESOLUTIONS.

No ordinance of any kind shall be passed by the City Council on the day of its introduction, nor within five (5) days thereafter, nor at any time other than a regular or adjourned regular meeting. At the time that an ordinance or resolution is up for final passage, it shall be read in full, unless after the reading of the title thereof, the further reading thereof is waived by motion of the City Council regularly made and approved by

the unanimous vote of those present. In the event that any ordinance is materially altered after its introduction, the same shall not be finally adopted except at a regular or adjourned regular meeting held not less than five (5) days after the date upon which such ordinance was so altered. The correction of typographical or clerical errors shall not constitute the making of an alteration within the meaning of the foregoing sentence. No resolution or any order for the payment of money shall have any validity or effect unless passed by the votes of at least four (4) members of the City Council, and no ordinance shall have any validity or effect unless passed by the votes of at least four (4) members of the City Council. (Ratified Spec. Mun. Elec. 10/29/57, Amend. No. 2; Approved by State Legislature Concurrent Res. No. 1 on 2/4/58).

Competitive Cable Systems

Our community:

- Was approached by RCN in 2000, but several months later they ceased pursuing a franchise.
- Has actively sought out competitive providers, but has not been successful.
- Has recently been approached by a Bell Operating Company to provide service. They indicated they were interested in only building their existing service area. Torrance is equally split between two BOC's.
- Has not denied any provider the opportunity to serve in our community.
- Have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

In regards to RCN, we met with them for approximately 30 days. We quickly responded to all requests for information, documents, and made ourselves available as needed. However, soon thereafter we learned in trade papers they were withdrawing all applications in California.

Conclusions

The local cable franchising process functions well in the City of Torrance. As the above information indicates, we are experienced at working with cable providers to see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises, thus, provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure

compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Torrance therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Torrance

A handwritten signature in black ink, appearing to read "Michael D. Smith", with a stylized flourish at the end.

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